

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

**EDWARD CONSTANTINESCU,
PERRY “PJ” MATLOCK,
JOHN RYBARCZYK,
GARY DEEL,
STEFAN HRVATIN,
TOM COOPERMAN,
MITCHELL HENNESSEY,
DANIEL KNIGHT.**

No. 4:22-CR-00612-S

DEFENDANTS’ MOTION TO COMPEL EVIDENCE PRODUCTION¹

Pursuant to an amended scheduling order entered on April 27, 2023, the government’s evidence production was due June 5, 2023. [ECF 254]. Defendants Edward Constantinescu, Mitchell Hennessey, Perry “PJ” Matlock, Tommy Cooperman, Gary Deel, and Stefan Hrvatin respectfully request an order requiring the government to produce its list of allegedly “false” statements attributable to the Defendants, which it repeatedly represented to this Court would be produced and “trial ready [] on June 5th.” (Tr. at 59, Apr. 12, 2023).

The government repeatedly emphasized at a hearing before this Court on April 12, 2023 that it would be producing additional fact evidence concerning allegedly “false” statements on June 5, 2023. In fact, in a discussion at the hearing regarding some of the

¹ This is a joint motion filed on behalf of Defendants Edward Constantinescu, Mitchell Hennessey, Perry “PJ” Matlock, Tommy Cooperman, Gary Deel, and Stefan Hrvatin.

defendants' concerns about the trial date, counsel for the government stated: "we took Your Honor's words to heart and we gave A-Plus work in our March 31st disclosure and we will continue doing that A-Plus work on the June 5th disclosure that all parties agreed to . . . that that was an acceptable date and we are meeting every single discovery milestone in this case." (Tr. at 52–53, Apr. 12, 2023). Then, with respect to their promise to produce allegedly "false" statements and in response to argument from counsel for Mitchell Hennessey that the government must identify the allegedly "false" statements, the following exchange occurred:

THE COURT: Is that going be part of the June disclosure, Mr. Armstrong?

MR. ARMSTRONG: Which part, Your Honor?

THE COURT: 'These are the statements we think are false.'

MR. ARMSTRONG: Absolutely.

THE COURT: Is there a way you can make that kind of a flowing discovery? When you have the statements organized, you can release them as soon as you can because I think Ms. Cordova is right, especially with regard to the conspiracy count. You've got to not only worry about your own statements, you've got to worry about the other statements.

MR. ARMSTRONG: . . . we want to be thorough and we want to get it right and we want to make sure, as Mr. Williams alluded to in our last hearing, that we don't miss something and then we have to include it or supplement our disclosures. **So we want to have the final set, the trial ready set on June 5th, which we will.**

(Tr. at 58–59, Apr. 12, 2023). The government further indicated its estimation that it would probably be producing more than 1500 allegedly "false" statements. Finally, the Court emphasized: "I'm going to leave the June 5th deadline where it is. Mr. Armstrong, if you

get done earlier I'd like you to get it to the defendant as soon as possible." (Tr. at 60, Apr. 12, 2023).

The government now takes the incorrect position that the amended scheduling order entered on April 27, 2023 changed its deadline to produce the list of allegedly "false" statements. It did not. A list of allegedly "false" statements presents an issue separate and apart from the profits calculations which are the subject of the government's promised expert reports and fits squarely within the government's obligation to produce its fact evidence by June 5, 2023. Production of the allegedly "false" statements by June 5th was discussed at-length in open court and was the expectation of all of the Defendants and their counsel. Forcing the defendants to wait an additional ten days to receive over 1500 allegedly "false" statements is unjustified. The government should be compelled to produce their list, or what exists of it, immediately.

In the alternative, because the government's list of purported "false" statements may inform analysis regarding certain issues raised in the Defendants' various motions to dismiss, Defendants request an extension of time to file reply briefs on those motions - seven days from the date of the government's production, assuming the list is produced on June 15, 2023.

WHEREFORE PREMISES CONSIDERED, Edward Constantinescu, Mitchell Hennessey, Perry "PJ" Matlock, Tommy Cooperman, Gary Deel, and Stefan Hrvatin respectfully grant the Motion to Compel Evidence Production.

Respectfully Submitted,

/s/ Chip Lewis
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CERTIFICATE OF CONFERENCE

Counsel conferred with the government regarding their position on Motion to Compel Evidence Production on this the 6th day of June 2023. The government is OPPOSED.

/s/ Chip Lewis
CHIP LEWIS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion has been forward via electronic mail to the government on this the 6th day of June 2023.

/s/ Chip Lewis
CHIP LEWIS